

APPEAL NO. 040896
FILED JUNE 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 31, 2004. The hearing officer determined that: (1) the compensable injury of _____, does extend to and include an injury of depression; (2) the average weekly wage (AWW) for the purpose of computing temporary income benefits (TIBs) between _____, and the current date, pursuant to Section 408.0446(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.7(c)(2) (Rule 128.7(c)(2)), is \$336.56, resulting in TIBs in the amount of \$235.59 per week; (3) the AWW for the purpose of computing impairment income benefits (IIBs) between _____, and the current date, pursuant to Section 408.0446(c) and Rule 128.7(e), is \$243.51, resulting in IIBs in the amount of \$170.46 per week; and (4) the appellant/cross-respondent (self-insured) is entitled to recoup an overpayment of benefits due to a revised AWW. The self-insured appealed the hearing officer's extent-of-injury determination and the respondent/cross-appellant (claimant) appealed the hearing officer's recoupment determination. The self-insured responded to the claimant's cross-appeal and urged affirmance of the hearing officer's recoupment determination. The hearing officer's AWW determinations were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed, as reformed.

We note that the unappealed Findings of Fact Nos. 5 and 6 contain a typographical error and we reform those findings of fact to correct the typographical error and conform to the hearing officer's Conclusion of Law No. 5 and the evidence presented at the CCH. Findings of Fact Nos. 5 and 6 are reformed to read \$243.51, rather than \$242.51.

The parties stipulated that the claimant sustained a compensable injury on _____. The hearing officer did not err in determining that the claimant's compensable injury of _____, extends to include an injury of depression. There was conflicting evidence. The hearing officer reviewed the record and decided what facts were established. The hearing officer was persuaded by the claimant's testimony and her medical evidence to determine that the claimant's compensable injury extends to include her depression. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining that the self-insured is entitled to recoup an overpayment of benefits due to a revised AWW. The unappealed hearing

officer's findings of fact were that: (1) the AWW for the purpose of computing TIBs was \$336.56, resulting in TIBs in the amount of \$235.59 per week; and (2) the AWW for the purpose of computing IIBs was \$243.51, resulting in IIBs in the amount of \$170.46 per week. See Rules 128.7(c)(2) and 128.7(e). The claimant argues that the self-insured is not entitled to recoupment because the miscalculation of AWW was based on the self-insured's own mistake. In Texas Workers' Compensation Commission Appeal No. 033358-s, decided February 18, 2004, we held that prior precedent decisions concerning recoupment that were based on equitable principles were superseded by Rule 128.1(e). Rule 128.1(e), effective May 16, 2002, provides a way for a carrier to recoup overpayment of TIBs in situations where the AWW is miscalculated. In the present case, the hearing officer could find that Rule 128.1(e) clearly applies and provides the basis for recoupment by the self-insured. We perceive no error.

The hearing officer's decision and order are affirmed, as reformed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge